

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

and

AQUINNAH/GAY HEAD
COMMUNITY ASSOCIATION, INC.
(AGHCA) and TOWN OF AQUINNAH,

*Intervenor-Plaintiffs/Counterclaim-
Defendants,*

vs.

THE WAMPANOAG TRIBE OF GAY
HEAD (AQUINNAH), THE
WAMPANOAG TRIBAL COUNCIL OF
GAY HEAD, INC., and THE
AQUINNAH WAMPANOAG GAMING
CORPORATION,

Defendants/Counterclaim-Plaintiffs,

and

CHARLIE BAKER, in his official
capacity as GOVERNOR,
COMMONWEALTH OF
MASSACHUSETTS, et al.,

Third-Party Defendants.

CASE NO: 1:13-cv-13286-FDS

[Formerly Supreme Judicial Court for Suffolk
County, Massachusetts, CIVIL ACTION NO.
2013-0479]

Hearing Date: May 20, 2019

Place: Courtroom 2

Time: 11:00 a.m.

**HONORABLE JUDGE F. DENNIS
SAYLOR IV**

**WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)'S MOTION FOR
LEAVE TO FILE A SUR-REPLY IN OPPOSITION TO TOWN OF
AQUINNAH'S MOTION FOR ENTRY OF FINAL JUDGMENT**

Prevailing parties on appeal, Defendants¹ Counterclaimants Wampanoag Tribe of Gay Head (Aquinnah) and the Aquinnah Wampanoag Gaming Corporation (“AWGC”) (collectively “Defendants” or “Tribe”), hereby move for leave to file a sur-reply in Opposition to Intervenor-Plaintiff/Counterclaim-Defendant the Town of Aquinnah’s (“Town”) Motion for Entry of Final Judgment (Doc. 181). The Tribe seeks such leave in the event the Court grants the motion for leave to file a reply brief, submitted by the Town and Intervenor-Plaintiff/Counterclaim-Defendant, the Aquinnah/Gay Head Community Association, Inc.’s (“AGHCA”) (Doc. 186), and/or grants the motion for leave to file a reply brief submitted by Plaintiff Commonwealth of Massachusetts and Third-Party Defendants Governor Charlie Baker, Attorney General Maura Healey, and Massachusetts Gaming Commission Chairman Cathy Judd Stein (collectively referred to as “Commonwealth” or “State”)² (Doc.187).

The Tribe has filed simultaneously herewith opposition to both motions for leave to file reply briefs. In the event either or both motions for leave to file reply briefs are granted, the Tribe seeks leave to file a ten-page sur-reply, attached hereto as Exhibit 1.

Such sur-reply is necessary to correct the numerous inaccuracies and misstatements in the Town’s and the AGHCA’s proposed reply brief, and is necessary to correct and clarify the issues raised by the Commonwealth. Moreover, leave should be granted because the Tribe will otherwise be deprived of any opportunity to respond to the Commonwealth’s “reply,” which is a misnomer because the Commonwealth had not previously weighed in on

¹ The Wampanoag Tribal Council of Gay Head, Inc., which was named as a party defendant, was an entity created under the laws of the Commonwealth and no longer exists.

² The full caption in this matter should reflect that the name of Third Party Defendant Chairman of the Massachusetts Gaming Commission has changed to Cathy Judd Stein.

the Town's Motion for Entry of Final Judgment (Doc. 181). Additionally, acceptance of the Tribe's ten-page reply, which is acutely focused on the arguments made in the two proposed reply briefs, will not delay these proceedings, in which no hearing has yet been scheduled or ruling made. The Tribe believes that the proposed sur-reply will be helpful in assessing the merit, or lack thereof, of the arguments presented in the two proposed reply briefs and in determining the propriety of the two competing proposed forms of final judgment submitted, respectively, by the Tribe and the Town.

For the reasons set forth herein, and the reasons set forth in the pleadings filed simultaneously herewith, this Court should either deny all three motions for leave to file reply and sur-reply briefs, or grant all three motions for leave to file reply and sur-reply briefs. Moreover, the Tribe requests that the Town's motion be scheduled for oral argument because of the importance to all parties of the wording and manner in which this Court spreads the Mandate issued by the First Circuit. *Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah)*, 853 F.3d 618 (1st. Cir. 2017).

Dated: May 1, 2019

Respectfully Submitted,

s/ Scott Crowell
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CERTIFICATE OF SERVICE

I, Scott Crowell, hereby certify that I filed through the ECF System and therefore copies of the **WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)'s MOTION FOR LEAVE TO FILE A SUR-REPLY IN OPPOSITION TO TOWN OF AQUINNAH'S MOTION FOR ENTRY OF FINAL JUDGMENT** will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). All non-registered CM/ECF participants will receive a copy of this filing via USPS.

Dated: May 1, 2019

s/ Scott Crowell
SCOTT CROWELL